

**REMARKS****I. Status of the Claims**

Claims 1-27 are currently pending in the application. Of these, claims 1, 11, 21, 22, and 24-27 are independent.

By this Amendment, claims 1, 11, 22, 24, 25, 26 and 27 have been amended. No new matter has been added by this Amendment. Upon entry of this Amendment, claims 1-27 would still be pending.

**II. Rejections under 35 U.S.C. § 102 & § 103**

Claims 1-21 and 27 are rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Halbert (US 6,101,484). Claims 22-26 are rejected under 35 U.S.C. § 102 as being allegedly unpatentable over Halbert. The Applicant respectfully traverses these rejections for the reasons set forth below.

**1. Claims 1, 11 and 21:**

Independent claims 1, 11, and 21 recite features involving the transmission of a content item at a quality level that is based on a total collective payment. For instance, these claims involve transmitting the content item at a premium quality level when the total collective payment is greater than or equal to the collective earning threshold; and transmitting the content item at an impaired quality level when the total collective payment is less than the collective earning threshold.

The cited reference Halbert and the alleged well known facts, individually or in combination, do not appear to disclose or suggest at least this claimed transmission feature and

particularly the alternative scenarios depending on whether the total collective payment is greater than or equal or less than the collective earning threshold.

Halbert discusses a dynamic market equilibrium management system for the sale of goods and services through an online buying group (“co-op”) formed for the specific purpose of purchasing a particular product. In Halbert, potential buyers submit binding “offers” to purchase a product. These offers may result in the adjustment of the minimum offer threshold (depending on the offered price, number of outstanding offers and corresponding offer prices, etc.). When a suitable equilibrium is met (e.g., from a supply/demand/price), the buyers are informed whether their offer has been accepted or not. In Halbert, the buying group is either able to purchase the product or not.

The Examiner acknowledges that Halbert is silent as to the claimed transmission feature as noted above. The Examiner, however, takes Official Notice that:

[I]t is old and well known in the computer art that the communication service providers’ charge higher fees to consumers for transmitting a program via a broadband signal (i.e. faster download speed with a bigger image and better resolution) or a HDTV signal (i.e. higher resolution) in comparison for transmitting the same program to said consumers via a dial up or analog connection (i.e. slower download speed with a smaller image with less resolution).

The Applicant respectfully traverses the taking of Official Notice particularly as applied in the context of the present claims at issue and request the Examiner to provide objective support.

Further, the Office Action does not address the claim as a whole, but rather in a piecemeal fashion. Specifically, the alleged well known facts still do not address at least the claimed alternative transmission of the content item, namely premium or impaired, based on the conditions. There is nothing in either Halbert or the Official Notice that discloses or suggests the claimed alternative transmission scenarios, namely transmitting the content item at a premium

quality level when the total collective payment is greater than or equal to the collective earning threshold; and transmitting the content item at an impaired quality level when the total collective payment is less than the collective earning threshold. transmitting. For instance, Halbert simply teaches a buying group which either is able to purchase or not purchase a specific product. The Examiner's Official Notice simply indicates that higher fees may be charged for better service.

Further, along these similar lines, there is no "proper" motivational basis for combining the references to read on the claim as a whole. The Examiner's motivational basis for combining the references is not found in the teachings of the cited art, and is not knowledge available to persons of ordinary skill in the art as alleged by the Examiner. The Office Action provides no objective support for the alleged motivational basis described on pages 3 and 4. Furthermore, the alleged motivational basis still does not address the claim as a whole, namely, the alternative transmission scenarios. The Office Action on pages 3 and 4 simply alleges how a higher quality service may be obtained, but not the alternative in the event the threshold is not met.

Moreover, claims 1 and 11 have been amended to include evaluating the received total collective payment and to reflect that the manner of transmission is conditioned upon the evaluation of the received total collective payment. That is, as claimed, the received total collective payment (e.g., actual payment) is evaluated to ascertain the manner of transmission, which is different than evaluation of the binding "offers" to an adjustable threshold as in Halbert. Similarly, claim 21 further recites "to compare a sum of the individual user payments to a collective earning threshold". That is, a sum of individual payments (e.g., actual payment) is compared to the threshold, which is different than comparing of binding "offers" to an adjustable threshold as in Halbert.

In view of the foregoing, claims 1, 11 and 21 are believed to be distinguishable over the cited art and alleged well known facts, individually or in combination.

**2. Claims 22, 24 and 25:**

Independent claims 22, 24, and 25 recite features that involve the scheduling of a content item for transmission when a total collective payment is greater than or equal to a collective earning threshold.

The Examiner alleges that this scheduling aspect is taught on column 9, lines 55-60 of Halbert which states:

3. All buyers that made successful offers are notified of the success thereof, and notified of the final price.

4. The buyers that made unsuccessful offers are likewise notified of the situation.

Detailed Description of the Apparatus

The apparatus and software for practicing the preferred implementation of the invention is shown in FIGS. 1, 2 and 4.

The cited portion of Halbert, however, simply discusses notifying buyers of whether their offer is successful or not. It is apparent that this cited portion is silent as to any scheduling pertaining to the transmission of content item or such scheduling occurring under the claimed condition. The Office Action does not address the claimed “scheduling” aspect with reasonable particularity or where this is taught in the cited reference. Accordingly, claims 22, 24 and 25 are distinguishable over the cited reference.

Furthermore, claims 22, 24 and 25 have been amended to include evaluating the received total collective payment and to reflect that scheduling is conditioned upon the evaluation of the received total collective payment. That is, as claimed, that which is evaluated

is the received total collective payment (e.g., actual payment), which is different than the binding “offers” discussed in Halbert.

In view of the foregoing, claims 22, 24 and 25 and their dependent claims are believed to be distinguishable over the cited art.

**3. Claims 26 and 27:**

Independent claims 26 and 27 recite features involving the transmission or receipt, respectively, of a content item in a manner that is based on a comparison between a total collective payment and a collective earning threshold. That is, the manner in which a content item is transmitted or received is based on a comparison between a total collective payment and a collective earning threshold.

As described above, Halbert discusses a dynamic market equilibrium management system for the sale of goods and services through an online buying group (“co-op”) formed for the specific purpose of purchasing a particular product, and not how such product is provided, transmitted or received. It necessarily follows that Halbert is also silent as to the arrangement in which the manner in which a content item is transmitted or received is based on a comparison between a total collective payment and a collective earning threshold. The Office Action does not adequately address the above-noted features, namely that transmission or receipt of content item based on the claimed condition (i.e., based on a comparison between a total collective payment and a collective earning threshold) or identify where this is taught in the cited reference.

Although the Office Action on page 7 takes Official Notice that “it is old and well known in the computer art to wirelessly communicate via the Internet or TV”, this allegation still does not address or remedy the above-noted deficiencies of Halbert, namely, that the reference is

silent as to the manner in which a content item is transmitted or received is based on a comparison between a total collective payment and a collective earning threshold. Further, the Office Action has not provided any objective motivational basis for combining the teachings of Halbert in the manner suggested by the Examiner based on the alleged well known fact. Accordingly, claims 26 and 27 are distinguishable over the cited reference and the Official Notice. As to this Notice, the Applicant respectfully traverses the Examiner's taking of such Official Notice particularly in the context as applied to these claims, and requests the Examiner to provide objective support therefor.

Moreover, claims 26 and 27 have been amended to clarify that transmission or receipt is conditioned upon the comparison of the received total collective payment. That is, as claimed, the received total collective payment (e.g., actual payment) is compared to a threshold to ascertain the manner of transmission or receipt, which is different than comparison of binding "offers" to an adjustable threshold as in Halbert.

In view of the foregoing, claims 26 and 27 are believed to be distinguishable over the cited art and the alleged well known facts, individually or in combination.

**4. Dependent claims 2-7 and 23:**

**A. Claim 2:**

Claim 2 recites that the step of defining a collective earning threshold comprises selecting a threshold value from a time-varying threshold function. That is, the threshold value is variable and is selected from a time-varying threshold function.

The Examiner contends that this feature is taught in Halbert in column 7, line 55 to column 8, line 15. However, this cited portion simply describes a minimum offer threshold

which may be adjusted based on submitted offers and show how such changes may occur with reference to a histogram. Halbert appears to be silent as to any operation of a selection of a time-varying threshold function (e.g., threshold varies according to time). The only mention of time relates to the closing time for the co-op. Accordingly, claim 2 is further distinguishable over the cited references.

**B. Claim 3-4:**

Claim 3 recites that the further step of awarding a prize to one or more users according to a prize criterion. Claim 4 recites that the awarding step comprises awarding a prize to the user that has contributed the largest of the individual user payments.

The Examiner acknowledges that this feature is not taught or suggested by Halbert. The Examiner, however, takes Official Notice and alleges that:

[I]t is well known in the business art to grant awards or recognition to the biggest contributor of a cause. It would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Halbert would give awards to buyers that contribute the most to a group purchase in order to compensate said buyers for allowing a group purchase order to be fulfilled due to reaching a “minimum offer threshold”.

The Applicant respectfully traverses the Examiner’s taking of such notice particularly in the context as applied to these claims, and requests the Examiner to provide objective support therefor. Furthermore, the Examiner’s motivational basis for the combination is neither from any cited art nor from knowledge available to one of ordinary skill in the art. The Office Action provides no objective support whatsoever for the Examiner’s allegations.

Moreover, Halbert is a dynamic market equilibrium management system. That is, it relies on the marketplace (e.g., supply and demand). Thus, contrary to the Examiner’s

allegations, one of ordinary skill in the art would not modify Halbert to award buyers that contribute the most.

Thus, the Office Action has not established a prima facie case of obviousness. Accordingly, claims 3 and 4 are further distinguishable over the cited reference.

**C. Claims 5-7:**

Claim 5 recites that the step of transmitting the content item at a downgraded quality comprises reducing the resolution of images included in the content item. Claim 6 recites the step of transmitting the content item at an impaired quality comprises reducing the size of one or more images included in the content item. Claim 7 recites that the step of transmitting the content item at an impaired quality comprises increasing the distortion of audio signals included in the content item.

The Office Action does not adequately address these claimed feature with reasonable particularity. The Examiner's reference to his arguments with regard to claim 1 does not address the specific claim language of these dependent claims. As such, the Office Action has not established a prima facie case of obviousness. Furthermore, the Applicant respectfully traverses the Examiner's taking of Official Notice (with reference to claim 7) particularly as applied to claim 7 and requests the Examiner to provide objective support. Accordingly, claims 5-7 are further distinguishable over the cited reference.

**D. Claim 23:**

Claim 23 further recites identifying a stale payment when the total collective payment is less than the collective earning threshold; and providing a content item reselection



opportunity to the user device that placed the stale payment. For the Examiner's reference, as described in the specification, a stale payment is for example payments for the selected content item transmitted prior to a particular time.

The Examiner contends that this feature is taught on column 7, lines 55-65 of Halbert. This cited portion of Halbert however simply describes binding offers which may or may not be employed to modify the minimum offer threshold or be accepted (e.g., successful) in the end. The Office Action as well as Halbert are silent as to any reselection opportunity for a user device that placed the stale payment or the conditions triggering such a reselection as claimed. The Office Action does not adequately address the language of this claim or how Halbert anticipates this claim.

Accordingly, claim 23 is further distinguishable over the cited reference.

**CONCLUSION**

Based on the foregoing amendments and remarks, the Applicant respectfully requests reconsideration and withdrawal of the rejection of claims and allowance of this application.

**AUTHORIZATION**

The Commissioner is hereby authorized to charge any additional fees which may be required for consideration of this Amendment to Deposit Account No. 13-4500, Order No. 4208-4076.

In the event that an extension of time is required, or which may be required in addition to that requested in a petition for an extension of time, the Commissioner is requested to grant a petition for that extension of time which is required to make this response timely and is hereby authorized to charge any fee for such an extension of time or credit any overpayment for an extension of time to Deposit Account No. 13-4500, Order No. 4208-4076.

Respectfully submitted,  
MORGAN & FINNEGAN, L.L.P.

Dated: \_\_\_\_\_

5/24/06

By: \_\_\_\_\_



James Hwa  
Registration No. 42,680  
(202) 857-7887 Telephone  
(202) 857-7929 Facsimile

**Correspondence Address:**

MORGAN & FINNEGAN, L.L.P.  
3 World Financial Center  
New York, NY 10281-2101